

High Court, Kerala

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Supreme Court, referred to by our learned brother in Para. 19 of this judgment, to limit the liability of the insurer, has no application to the present case.”

60. In the light of the discussion made above, our conclusions on the two questions referred to earlier are as follows :

(i) in so far as the first question is concerned, as observed earlier, we respectfully agree with the conclusion reached by our learned brother ;

(ii) in so far as the second question is concerned, we are of the view that the insurer is liable to indemnify the owner against the compensation awarded by the Tribunal subject to the limit prescribed under Sub-sec.(2) of S.95 of the Act if the accident in question takes place on account of the tortious act of the driver of the vehicle when the claimant is not a driver, who was engaged in actually driving the vehicle in the case of injury to him or his legal heirs in the case of his death;

(iii) if the claimant fails to prove tortious act on the part of the driver of the vehicle as stated above, the insurer would be liable to indemnify the owner only to the extent of the liability of the owner to pay compensation to the employee as

prescribed under the Compensation Act ; and

(iv) merely because a claim is made before the Tribunal for payment of compensation, the insurer is not absolute of his liability to pay compensation prescribed under the Compensation Act

61. In the instant case, the appellant is an additional driver. He was not driving the vehicle. The Tribunal has only made the owner liable to pay the compensation of Rs.52,400 awarded to the appellant with interest. The Tribunal has rejected the claim of the appellant against the insurance company on the ground that the policy does not cover any additional driver. It cannot be disputed that the appellant being an additional driver travelling in the vehicle, he is an employee of the owner. In the light of the conclusion reached above, we are of the opinion that the insurer is liable to pay the compensation awarded to the appellant in term of S.96 of the Act. We accordingly answer the reference made to the Full Bench by the learned Single Judge.

62. The papers may now be placed before the learned Single Judge as ordered by our learned brother

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IN THE HIGH COURT OF JUDICATURE, KERALA

[Writ Appeal No. 2514 of 1999, decided on 25 November 1999]

PRESENT :

SRI ARIJIT PASAYAT, Chief Justice

JUSTICE SRI K.S. RADHAKRISHNAN

Between

Board of Revenue

and

Parameswaran Nair

1. *Kerala Service Rules, Part III, rules 2, 3 and 135 — Withholding of pension under rule 2 — Conviction of Government servant and punishment of imprisonment imposed— Effect on pension — Held, rule 2, dealing with power of Government to withhold or withdraw pension does not operate automatically —Order in writing by Government is necessary — Rule 3 applies only when pecuniary loss is caused to*

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Government — Pension of Government servant cannot be withheld merely because of his conviction :

Held : Rule 2 of Kerala Service Rules, Part III, deals with the power of the Government to withhold or withdraw pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a "serious crime" or is found guilty of a "grave misconduct." For bringing into operation rule 2, an order in writing by Government is necessary. Admittedly, such an order is not in existence till now. Explanation to the rule deals with crimes which can be encompassed with the expression "serious crime." Whether the offence for which respondent was convicted can be called a "serious crime" is not the subject-matter of dispute in the present case. Rule 3 deals with the power of the Government to reserve unto themselves the right to withhold or withdraw pension under circumstances enumerated therein.

Same has application when the withholding or withdrawing or recovering is relatable to pecuniary loss caused to the Government and if in a departmental or judicial proceeding a pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. The final order can be passed under the provision after consultation with Public Service Commission. That situation has also not arisen in the case at hand. Rule 135 deals with "lapses and forfeiture." This provision has application only when pension remains undrawn for more than one year. The question of the pension remaining undrawn in the present case does not arise. No pension in fact was sanctioned for payment. [Para.6]

2. Pension — Is a deferred portion of compensation for service rendered — It can be reduced or withdrawn as a disciplinary measure :

Held : Pension is not only compensation for loyal service rendered in the past, but it also has a broader significance in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers are ebbing corresponding to aging progress and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for

oneself due to old age. One may live and avoid unemployment but not senility and pecuniary if there is nothing to fall back upon. Pension is neither bounty nor a matter of grace depending upon the sweet-will of the employer. It creates a vested right subject to rules holding the field. The quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure. [Paras. 14 and 16]

Cases referred :	Paras.
1. 1999 (2) L.L.N 651	18
2. A.I.R. 1985 S.C. 356	18
3. 1983 (1) L.L.N. 289	11
4. (1937) 302 U.S. 74	13

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For appellant. — Sri C.T. Ravikumar, Government Pleader.

For respondents. — Sri Siby Mathew, Sri A.A. Mohammed Nazeer,
Sri Wilson Urmese and Ms A.Chitra.

JUDGMENT

Per Arijit Pasayat, C.J. : — Judgment passed by learned Single Judge holding that respondent was entitled to pension with interest at the rate of 18 per cent *per annum* for the period during which pension was not paid is subject-matter of challenge.

2. A brief reference to the factual aspects would suffice. Respondent who was serving as village assistant retired from service with effect from 31 May 1990. Sub-Judge, Thrissur, convicted respondent by judgment dated 26 October 1991 in C.C.No. 14 of 1991 and imposed sentence of imprisonment for a period of one year and a fine of Rs. 5000, with a default condition of simple imprisonment for three months in case of non-payment of fine. Respondent was arrested on 12 December 1994, and remained in custody till November 1995. Respondent was paid pension till November 1994. As he was convicted, minimum pension payable to him was stopped on the ground that he was undergoing imprisonment from 13 December 1994. Respondent preferred his pension bill from December 1994. But no pension was in reality paid.

3. In the original petition, O.P. No. 12371 of 1996, stand of State Government was that because of his conviction, orders were to be passed whether pension was to be paid or not and the matter was awaiting orders of sanction for withholding payment of minimum pension. Learned Single Judge found that there was no provision specifically authorising withholding of pension. Accordingly direction was given to pay minimum pension and interest at the rate of 18 per cent covering the period of non-payment.

4. According to learned counsel for the State, Part III of Kerala Service Rules, 1959 (in short, the K.S.R.) deals with "pension" and rules 2 and 3 read with rule 135 make the respondent disentitled from receiving pension. Learned counsel Sri Siby Mathew appearing for respondent submitted that

these provisions, as referred to by learned counsel for the State, have no relevance.

5. For appreciating the rival submissions, it is necessary to extract the provisions as referred to.

"Rule 2 (a). *Future good conduct shall be an implied condition of every grant of a pension.* — The Government may, by order in writing, withhold or withdraw a pension or part thereof whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

(b) Where a pensioner is convicted of a serious crime by a Court of law action under Cl.(a) shall be taken in the light of the judgment of the Court relating to such conviction.

(c) In a case not falling under Cl.(b), if the Government under Cl.(a) considers that the pensioner is *prima facie* guilty of grave misconduct, it shall, before passing an order under Cl.(a)

(i) Serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit within fifteen days of the notice or such further time not exceeding fifteen days may be allowed, his explanation for such misconduct.

(ii) Take the explanation, if any, submitted by the pensioner under Sub-cl.(i) into consideration.

(d) The Public Service Commission shall be consulted before final orders are passed

Explanation : In this rule, the expression 'serious crime' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923), and the expression "grave misconduct" includes the communication or disclosure of any secret official code or password or any sketch, plan, model, rule, note, document or information, such as is mentioned in S.5 of the said Act (which was obtained while

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holding office under the Government) so as to prejudicially affect the interest of the general public or the security of the State ;

Rule 3. The Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service; including service rendered upon re-employment after retirement.

Provided that :

(a) such departmental proceeding, if instituted while the employee was in service, whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service ;

(b) such departmental proceeding, if not instituted while the employee was in service, whether before his retirement or during his re-employment —

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution ; and

(iii) a shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service ;

(c) No such judicial proceedings, if not instituted while the employee was in service whether before his retirement or during his re-employment, shall be instituted, save with the sanction of the Government, in respect of a cause of action which arose or an event which took place

more than four years before such institution.

(d) The Public Service Commission shall be consulted before final orders are passed."

"Rule 135. *Lapses and forfeiture*—If a pension remain undrawn for more than one year pension ceases to be payable."

6. Rule 2 deals with the power of the Government to withhold or withdraw pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a "serious crime" or is found guilty of a "grave misconduct." For bringing into operation rule 2, an order in writing by Government is necessary. Admittedly, such an order is not in existence till now. Explanation to the rule deals with crimes which can be encompassed with the expression "serious crime." Whether the offence for which respondent was convicted can be called a "serious crime" is not the subject-matter of dispute in the present case. Rule 3 deals with the power of the Government to reserve unto themselves the right to withhold or withdrawing pension under circumstances enumerated therein. Same had application when the withholding or withdrawing or recovering is relatable to pecuniary loss caused to the Government and if in a departmental or judicial proceeding a pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. The final order can be passed under the provision after consultation with Public Service Commission (in short Commission). That situation has also not arisen in the case at hand. Rule 135 deals with "lapses and forfeiture" This provision has application only when pension remains undrawn for more than one year. The question of the pension remaining undrawn in the present case does not arise. No pension in fact was sanctioned for payment.

7. In the circumstances, learned Single Judge was justified in concluding that pension was withheld without any authority.

8. The other question that remains to be adjudicated is whether the rate of interest as stipulated is proper. After rendering years of

service the employer finds from records that the employee has reached a particular age and he should retire. Immediate consequence of these is reduction in the payment made to him by the employer. Thereafter what the employee gets is normally called pension. Factual matrix as indicted above only assists in dealing with broader issues involved.

9. A political society which has a goal of setting up of a welfare state, would introduce and has in fact introduced as a welfare measure wherein the retiral benefit is grounded on consideration of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later day development. And this journey was over a rough terrain. To note only one state in 1856 a royal Commission was set up to consider whether any changes were necessary in the system established by the 1834 Act. The Report of the Commission is known as "Northoote-Trevelyan Report." The report was pungent in its criticism when it says that : "in civil service comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity furnish strong inducements to the parents and friends of sickly youth to endeavor to obtain for them employment in the service of the Government and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system." (See Gerald Rhodes, Public Sector Pensions).

10. This approach is utterly unfair because in modern times public services are manned by those who enter at a comparatively very young age, with selection through national competitive examination and ordinarily the best talent gets the opportunity.

11. Let us therefore, examine as was done by the Apex Court in *D.S.Nakara v. Union of India* [1983 (1) L.L.N. 289], as to what are the goals that pension scheme seeks to

subserve. A pension scheme consistent with available resources must provide that the pensioner would be able to live :

- (i) free from want with decency, independence and self-respect, and
- (ii) at a standard equivalent at the pre-retirement level.

This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, 'that is funny, I could not before.' It appears that in determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving now than the past. We owe it to them and ourselves that they live not merely exist. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. The law is one of the chief instruments whereby the social policies are implemented and pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual or a cash income adequate, when taken along with the benefit in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed. (See *Social Security Law* of Profs Harry Calvert).

12. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are :

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(i) as compensation to former members of the armed forces or their dependants for old age, disability, or death (usually from service causes);

(ii) as old age retirement or disability benefits for civilian employees; and

(iii) as social security payments for the aged, disabled or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, reward for service rendered, or as a means of promoting general welfare (See *Encyclopedia Britannica* Vol. 17, page 575). But these views have become otiose.

13. Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Dodge v. Board of Education* [(1937) 302 U.S. 74], a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

14. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers are ebbing corresponding to aging progress and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or

stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and sufficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for one self due to old age. One may live and avoid unemployment but not senility and pecuniary if there is nothing to fall back upon.

15. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them lose (See *American Jurisprudence* 24. 881).

16. From the discussion three things emerge

(i) that pension is neither bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to Orissa Civil Services (Pension) Rules, 1992 (in short, the Rules) or any other rules holding the field;

(ii) that the pension is not an *ex gratia* payment but it is a payment for the past service rendered; and

(iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for employer on an assurance that in their life old age they would not be left in lurch.

It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement. That is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

17. In *Corpus Juris Secundum*, Vol. 70, at page 423, it is stated that the title "pension" includes pecuniary allowances paid

periodically by Government to persons who have rendered services to the public or suffered loss or injury in the public service, or to their representatives; who are entitled to such allowances and rate and amount thereof; and proceedings to obtain and payment of such pensions.

17A. A pension is a periodical allowance of money granted by the Government in consideration or recognition of meritorious past services, or of loss or injury sustained in the public service. A pension is mainly designed to assist the pensioner in providing for his wants, and it pre-supposes the continued life of the recipient.

17B. In its strict sense a pension is not a matter of contract, and is not founded on any legal liability, it is a mere bounty or gratuity "springing from the appreciation and consciousness of the sovereign," and it may be given or withheld at the discretion of the sovereign. It may be bestowed on such persons and on such terms as the law-making body of the Government prescribes, and it is, at most, an expectancy granted by the law. The term "pension" has been compared and distinguished from "bonus," "compensation," "profits" and "retrenchment payment." A pension fund is to be distinguished from an annuity fund derived in part from voluntary contributions under a statutory opinion to contribute or refrain from contributing.

17C. The term "pension" is frequently, particularly in recent years, used in the broad sense of retirement pay or compensation in which it may partake of the nature of a contractual right rather than of gratuity, and, as used in this sense with respect to persons in the service of the Government, the term is fully discussed in *Officers q92*. A pension is a gratuity only where it is granted for services previously rendered which at the time they were rendered gave rise to no legal obligation.

18. A somewhat discordant note on the question whether pension and gratuity are bounty to be distributed by the Government to its employee on their retirement *vis-a-vis* the position as indicated in *Corpus Juris Secundum*, a similar view was also expressed in *State of Kerala and others v. M.*

Padmanabhan Nair [A.I.R. 1985 S.C. 356]. It was observed; that pension and gratuity are no longer any bounty to be distributed by the Government to its employee on their retirement but are valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. The view has been recently reiterated in *Dr. Uma Agrawal v. State of Uttar Pradesh and another* [1999 (2) L. L.N. 651].

19. It is to be noted that in certain countries wrongful withholding of pension money has been made a criminal offence and it has been observed in some of the western countries that the federal statute making the wrongful withholding of pension money a criminal offence must be strictly construed. The purpose of the statute, it was held, to protect the pensioner against fraud until the unconditional payment of the money to him.

20. In *Halsbury's Laws of England*, Fourth Edn., Reissue Vol.16, it has been observed on the subject as follows:

"Pension means, a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the Secretary of State is satisfied that it is to be paid in accordance with any scheme of arrangement having for its object or one of its objects to make provision in respect of persons serving in particular employment for providing them with retirement benefits and, except in the case of such a lump sum which had been paid to the employee, that:

(1) the scheme or arrangements is established by Act of Parliament or of the Parliament of Northern Ireland, or other instrument having the force of law; or

(2) the benefits under the scheme or arrangement are secured by an irrecoverable trust which is subject to the laws of any part of the Great Britain; or

(3) the benefits under the scheme or arrangements are secured by a contract of assurance or an annuity contract which is made with;

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(a) an insurance company to which the Insurance Companies Act, 1982, applies ; or

(b) a registered friendly society ; or

(c) an industrial and provident society registered under the Industrial and Provident Societies Act, 1965 ; or

(4) the benefits under the scheme or arrangement are secured by any regulation or other instrument, not being a regulation or instrument having the force of law, made with the authority of a Minister of the Crown or with the consent of the Treasury for the purpose of authorising the payment to persons not employed in the Civil Service of the State of such pensions, gratuities or other like benefits as might have been granted to person so employed ; or

(5) the scheme or arrangement is established by an enactment or other instrument having the force of law in any part of the Commonwealth outside the United Kingdom ;

and that the provision made to enable benefits to be paid, taking into account any additional resources which could and would be provided by the employer, or any person connected with the employer to meet any deficiency, is adequate to ensure payment in full of such benefits.

"Pension includes any part of a pension. 'Pension' does not include ;

(i) a payment of an employee which consists of solely of a return of his own contributions, with or without interest;

(ii) that part of payment to an addition which is attributable solely to additional voluntary contributions by that employee made in accordance with the scheme or arrangement ;

(iii) a periodical payment or lump sum, in so far as that payment or lump sum represents compensation under statutory compensation scheme and is payable under a statutory provision whether made or passed before, on or after 31 July 1978.

If in any case the Secretary of State is satisfied that benefits under the scheme or arrangement are wholly or mainly provided for the benefit of persons not resident to Great Britain, he may, if he thinks fit and subject to such conditions, if any, as he thinks proper, waive the requirement contained in head (2) above in respect of a scheme or arrangement the benefits under which are secured by an irrecoverable trust or the requirements of head (3)(a), 3(b) or head 3(c) above in the case of a scheme or arrangement the benefits under which are secured by a contract of assurance or an annuity contract."

21 But, at the same time, the rate as stipulated appears to be on the higher side. Taking into account the normal bank rate of interest, we fix it at 12 per cent *per annum*. Payment shall be made within three months from today. It goes without saying that if the Government desires to pass any order for taking action in terms of rule 2 or rule 3, as the case may be, our judgment shall not stand in its way, if permissible to be done.

Writ appeal is disposed of accordingly.

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IN THE HIGH COURT OF JUDICATURE, KERALA

[Writ Appeal No. 156 of 1997, decided on 5 November 1999]

PRESENT :

SRI ARIJIT PASAYAT, Chief Justice
JUSTICE SRI K.S. RADHAKRISHNAN

Between

Mani

and

State Bank of Travancore

1. Resignation — Can be withdrawn before it is accepted — Cannot be withdrawn after it is accepted :